

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"b."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development gives Notice of Intended Action to amend Chapter 311, "Renewable Fuel Infrastructure Board—Organization," Chapter 312, "Renewable Fuel Infrastructure Program for Retail Motor Fuel Sites," Chapter 313, "Renewable Fuel Infrastructure Program for Biodiesel Terminal Grants," and Chapter 314, "Renewable Fuel Infrastructure Program Administration," Iowa Administrative Code.

The amendments implement recent legislative changes as authorized in 2008 Iowa Acts, House File 2689. The amendments include updating Iowa Code citations; adding definitions for "biofuel," "biodiesel blended fuel," "person," "renewable fuel" and "tank vehicle"; incorporating the option of a three-year or five-year grant period; and listing requirements for award amounts for retail sites, terminal facilities for biodiesel B2 through B98 and B99/B100 for year-round distribution and tank vehicles.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on September 3, 2008. Interested persons may submit written comments to Dick Vegors, Iowa Department of Economic Development, 200 E. Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4796.

A public hearing will be held Wednesday, September 3, 2008, from 2:30 to 4 p.m. in the ICN/Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 E. Grand Avenue, Des Moines, Iowa 50309.

These amendments are intended to implement Iowa Code sections 15G.201, 15G.202 and 15G.205, Iowa Code Supplement sections 15G.203 and 15G.204, and 2008 Iowa Acts, House File 2689, and House File 2450, section 6(9)"f."

The following amendments are proposed.

ITEM 1. Amend **261—Chapter 311** as follows:

CHAPTER 311

RENEWABLE FUEL INFRASTRUCTURE BOARD—ORGANIZATION

261—311.1(81GA, ~~ch1142~~ 15G) Definitions. As used in these rules, unless the context otherwise requires, the definitions in ~~2006 Iowa Acts, chapter 1142, section 28,~~ Iowa Code section 15G.201 as amended by 2008 Iowa Acts, House File 2689, shall apply to this chapter and to 261—Chapters 312, 313, and 314. The following definitions shall also apply:

"Agreement" means the cost-share agreement executed by the department after approval of the grant by the board.

"Applicant" means ~~the owner or operator of a site~~ a person, as defined in this rule, who owns or operates a site.

"Biodiesel," for the ~~purposes~~ purpose of these rules this rule, must be at least B99.

"Biodiesel blend" must contain at least 1 percent biodiesel.

"Biodiesel blended fuel," as defined in Iowa Code section 214A.1, means blend of biodiesel with petroleum-based diesel fuel which meets the standards, including separately the standard for its biodiesel component. For the purpose of this rule, biodiesel blended fuel must contain at least 2 percent biodiesel at a terminal site and at least 1 percent at a retail site.

"Biofuel" means ethanol or biodiesel as defined in Iowa Code section 214A.1.

"Blender pump," for the purpose of this rule, means blending biofuel. When blending ethanol, the pump must dispense E-85 gasoline at all times.

“Board” means the renewable fuel infrastructure board established by 2006 Iowa Acts, chapter 1142, section 29 Iowa Code section 15G.202.

“Checklist” or “IDNR checklist” means the most recent version of the Underground Storage Tank System Checklist for Equipment Compatibility with E-Blend Fuels (greater than 10 percent by volume) issued by the Iowa department of natural resources.

“Grant” or “cost-share grant” means moneys awarded by the board on a cost-share basis from the renewable fuel infrastructure fund created by 2006 Iowa Acts, chapter 1142, Iowa Code section 15G.202 to help pay for a project.

“Person” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity as defined in Iowa Code section 4.1(20).

“Project” means the installation of equipment for motor fuel storage ~~or~~, dispensing ~~or~~ and distribution equipment, or both, for either of E-85 gasoline ~~or~~, biodiesel or biodiesel blend at a fueling site.

“Rack” means a metered motor fuel, special fuel or renewable fuel loading facility with the capacity to pump fuel at a rate of at least 100 gallons per minute (100 gpm); whether from an overhead, lateral, or underneath position, into a transportation vessel for further delivery.

“Renewable fuel,” as defined in Iowa Code section 214A.1, means a combustible liquid derived from grain starch, oilseed, animal fat, or other biomass; or produced from a biogas source, including any nonfossilized decaying organic matter which is capable of powering machinery, including but not limited to an engine or power plant. Renewable fuel includes but is not limited to biofuel, ethanol blended gasoline, or biodiesel blended fuel meeting the standards provided in Iowa Code section 214A.2 as amended by 2008 Iowa Acts, House File 2689.

“Retail” means offered for sale to the public for final consumption.

“Retail motor fuel site” means a site at which motor fuel is offered for sale to the public for final consumption. A retail motor fuel site may include a tank ~~wagon~~ vehicle or transport.

“Tank vehicle” means a motor vehicle designed to transport liquid or gaseous materials within a tank having a rated capacity of 1,001 or more gallons either permanently or temporarily attached to the vehicle or chassis.

261—311.2(81GA, ch1142 15G) Renewable fuel infrastructure board.

311.2(1) Composition.

a. Board structure. The board shall consist of 11 voting members appointed by the governor. The composition of the board shall be as described in ~~2006 Iowa Acts, chapter 1142, section 29~~ Iowa Code section 15G.202. Six voting members shall constitute a quorum. An affirmative vote of a majority of voting members, excluding any member who has a conflict of interest, is necessary for the board to take substantive action.

b. No change.

c. Department administrative functions. As specified in ~~2006 Iowa Acts, chapter 1142, section 29(1)~~ Iowa Code section 15G.202, the Iowa department of economic development shall perform administrative functions necessary for the management of the infrastructure board, and the infrastructure programs as provided in 261—Chapters 312 and 313. The department shall provide the infrastructure board with the necessary facilities, ~~items~~ supplies, and clerical support. The department will also market the renewable fuel infrastructure program throughout the state.

311.2(2) Meetings.

a. and b. No change.

c. Any interested party may attend and observe board and committee meetings except for such portion as may be closed pursuant to ~~Iowa Code section 21.5~~ Iowa Code Supplement section 21.5.

d. and e. No change.

311.2(3) Duties. The board shall perform the duties as outlined in ~~2006 Iowa Acts, chapter 1142, sections 28 to 32,~~ Iowa Code section 15G.202 and other functions as necessary and proper to carry out its responsibilities.

311.2(4) Board committees. Reserved.

These rules are intended to implement ~~2006 Iowa Acts, chapter 1142, section 29~~ Iowa Code section 15G.202.

ITEM 2. Rescind rule 261—312.1(81GA,ch1142) and adopt the following **new** rule in lieu thereof:

261—312.1(15G) Purpose. The purpose of the renewable fuel infrastructure program is to install, replace and convert infrastructure to store, blend, and dispense renewable fuels at a retail fuel site.

ITEM 3. Strike "81GA,ch1142" wherever it appears in rule **261—312.2(81GA,ch1142)** and insert "15G" in lieu thereof.

ITEM 4. Amend paragraph **312.2(3)“b”** as follows:

b. The fuel storage tank may be on a tank ~~wagon~~ vehicle or transport if regularly parked overnight in Iowa.

ITEM 5. Amend **261—Chapter 312**, as follows:

These rules are intended to implement ~~2006 Iowa Acts, chapter 1142, section 30~~ Iowa Code Supplement section 15G.203 as amended by 2008 Iowa Acts, House File 2689.

ITEM 6. Amend **261—Chapter 313** as follows:

CHAPTER 313
RENEWABLE FUEL INFRASTRUCTURE PROGRAM FOR
BIODIESEL TERMINAL GRANTS

261—313.1(81GA, ~~ch1142~~ 15G) Purpose. The purpose of the renewable fuel infrastructure program for biodiesel terminal grants is to provide grants to a terminal facility which stores, blends, or distributes biodiesel fuel, including B2 through B98 and B99/B100, to dealers and retailers. ~~provide grants to a terminal facilities that store and dispense biodiesel or biodiesel blended fuel for the purpose of distribution to dealers~~

261—313.2(81GA, ~~ch1142~~ 15G) Eligible applicants. To be eligible to receive a biodiesel terminal grant, an applicant shall:

313.2(1) to 313.2(3) No change.

These rules are intended to implement ~~2006 Iowa Acts, chapter 1142, section 31~~ Iowa Code Supplement section 15G.204 as amended by 2008 Iowa Acts, House File 2689.

ITEM 7. Amend **261—Chapter 314** as follows:

CHAPTER 314
RENEWABLE FUEL INFRASTRUCTURE PROGRAM ADMINISTRATION

261—314.1(81GA, ~~ch1142~~ 15G) Allocation of awards by congressional district. The board shall use the boundaries of the state's five congressional districts, and prorate and equally distribute the amount available each fiscal year for each district. The board shall have at its discretion a prorated amount (up to \$500,000) to distribute to any congressional district. On April 1 of each year, if funds allocated to a district have not been committed, the unobligated balance shall revert to the reserve fund and be available for other projects approved by the board.

261—314.2(81GA, ~~ch1142~~ 15G) Form of award available; award amount.

314.2(1) No change.

314.2(2) ~~Retroactive grants for projects already completed or in process. A grant may be awarded for an eligible project already completed or in the process of being completed on or after July 1, 2005, the effective date of the original grant program. This stipulation is true even if the project was not funded under the infrastructure program implemented pursuant to Iowa Code Supplement section 15.401.~~

~~314.2(3)~~ **314.2(2)** *Prospective grants for projects not commenced.* A grant may be awarded for an eligible project not yet commenced.

314.2(3) Amount of award.

a. Retail award site.

(1) Three-year cost-share agreement for a retail site. The maximum award amount is 50 percent of the actual cost of making the improvements or \$30,000, whichever is less.

(2) Five-year cost-share agreement for a retail site. The maximum award amount is 70 percent of the actual cost of making the improvements or \$50,000, whichever is less.

(3) Supplemental financial incentives. A person may be granted supplemental financial incentives as an amendment to the cost-share agreement.

1. Supplemental award for underwriter laboratories upgrade. The purpose of an award for Underwriter Laboratories (UL) is to upgrade to UL-certified dispensers, blender pumps and dispensing infrastructure, UL-approved conversion kits and approved and insurable installation project(s). The maximum amount available as a supplemental financial incentive is 75 percent of the actual cost of making the improvements or \$30,000, whichever is less.

2. Supplemental award for additional tank and associated infrastructure. A person may request a supplemental financial incentive for tank and associated infrastructure, as an amendment to the subsequent cost-share agreement(s). The purpose of an award for an additional tank(s) and associated infrastructure is to accelerate the installation of an additional tank(s) and associated infrastructure at an additional retail motor fuel site after an initial grant award is provided. To be eligible, the initial grant award must be awarded to the person on or after May 12, 2008. The maximum award amount available as a supplemental financial incentive is \$6,000 per supplemental site. The person is limited to four supplemental financial incentive awards within the 12-month period following the completion of the initial retail motor fuel site project.

b. Terminal facility award for biodiesel B2 through B98 and B99/B100 for year-round distribution.

(1) Biodiesel fuel B2 through B98.

1. Duration. The duration of the cost-share agreement shall be five years.

2. Maximum award. The maximum award amount is 50 percent of the actual cost of making the improvements or \$50,000, whichever is less.

(2) Biodiesel fuel B99/B100 for year-round distribution.

1. Duration. The duration of a cost-share agreement is five years.

2. Maximum award amount. The maximum award amount is 50 percent of the actual cost of making the improvements or \$100,000, whichever is less.

3. Application acceptance begins January 1, 2009. Grant applications for B99/B100 projects will be accepted beginning January 1, 2009.

4. Lifetime cap amount. The maximum or lifetime cap for B99/B100 biodiesel terminal grants is \$800,000 per person.

c. Tank vehicle.

(1) December 31, 2008, deadline. A tank vehicle application must be postmarked no later than December 31, 2008, to be eligible.

(2) Duration. The duration of the cost-share agreement is three years. The maximum award amount is 50 percent of the actual cost of making the improvements or \$30,000, whichever is less.

(3) Limitation on number of grants. A person may receive one grant for one tank vehicle used to store and dispense E-85 gasoline and one grant for one tank vehicle used to store and dispense biodiesel or biodiesel blend.

314.2(4) Amount of award. The maximum award limit per project shall not exceed \$30,000 or 50 percent of the actual cost of making the improvements, whichever is less, in the case of retail motor fuel site grants, or \$50,000 or 50 percent of the actual cost of making the improvements, whichever is less, in the case of biodiesel terminal grants.

~~314.2(5)~~ **314.2(4)** *Time of payment.* The grant shall be paid only upon timely completion of the project and upon the board's receipt of records satisfying the board of the applicant's qualifying expenditures.

a. to c. No change.

~~314.2(6)~~ **314.2(5)** *Deadline for completion.* The project must be completed within eight months of the board's approval of the award. An extension may be granted by the board upon application showing demonstrable progress toward completion.

~~314.2(7)~~ **314.2(6)** *Multiple awards for multiple fuel types.*

a. At a single fuel site. ~~The board may approve multiple awards for projects at a single site provided the total amount of the awards at that site does not in the aggregate exceed 50 percent of the actual cost of making the improvement or \$30,000 in the case of E-85 gasoline, biodiesel or biodiesel blended fuel grants, whichever is less, or 50 percent of the actual cost of making the improvement or \$50,000 in the case of biodiesel terminal grants, whichever is less, at that motor fuel site during the triennium ending June 30, 2012. A person must file a separate application form for an ethanol infrastructure improvement grant and a biodiesel infrastructure improvement grant, respectively, at a single fuel site. The infrastructure board may approve multiple improvements to the same retail motor fuel site for the full amount available for ethanol infrastructure and biodiesel infrastructure. Applications for ethanol and biodiesel infrastructure improvements must be written in separate cost-share agreements.~~

b. At multiple fuel sites. ~~An applicant may apply for and be granted multiple grants for different motor fuel sites. The \$30,000/50 percent and \$50,000/50 percent limits described in subrule 314.2(4) apply only to individual motor fuel sites. However, the board shall make awards fairly and properly among applicants and geographic areas. A person may receive multiple grants as described in paragraph 314.2(6) "a" for more than one motor fuel site. When considering multiple grants for multiple fuel sites, the infrastructure board will make awards fairly and properly among applicants and geographic areas.~~

e. ~~In the event that funding will be exhausted at the end of the fiscal year, the board shall approve remaining applications based on criteria implemented by the board as set forth in subrule 314.4(2).~~

314.2(7) *Exhaustion of funds.* In the event funding is exhausted at the end of the fiscal year or June 30, 2012, the board shall approve remaining applications based on criteria implemented by the board.

~~**314.2(8)** *No cross program double dipping beyond the per site maximum.* No project which has been funded under the infrastructure program administered pursuant to Iowa Code Supplement section 15.401 is eligible for funding under this program beyond the applicable program per site cap of \$30,000 or \$50,000.~~

261—314.3(81GA, ch1142 15G) Application process.

314.3(1) No change.

314.3(2) *Contents of application.*

a. Statutory requirements. An application shall include the information required in ~~2006 Iowa Acts, chapter 1142, section 30(4) "b."~~ Iowa Code Supplement section 15G.203.

b. No change.

261—314.4(81GA, ch1142 15G) Review process.

314.4(1) ~~The department shall forward completed applications to the underground storage tank fund board for evaluation and recommendation, as specified in 2006 Iowa Acts, chapter 1142, section 30(2). The underground storage tank fund board shall then forward the applications to the renewable fuel infrastructure board for final approval or disapproval. The renewable fuel infrastructure board shall determine the amount of financial incentives to be awarded to an applicant. The underground storage tank fund board has chosen not to review the applications. The renewable fuel infrastructure board will review an application for final approval or disapproval. The renewable fuel infrastructure board shall determine the amount of financial incentives to be awarded to an applicant.~~

314.4(2) No change.

261—314.5(81GA, ch 1142 15G) Contract administration.

314.5(1) No change.

314.5(2) *Contract required.* The board shall direct the department to prepare a cost-share agreement which shall include terms and conditions of the grant established by the board. The agreement will:

a. to *d.* No change.

e. Recite the penalty for the storage or dispensing, within the stated time frame of three years or five years from submission of verified documentation of project completion, of motor fuel other than the type of renewable fuel for which the grant was awarded.

f. Be amended to include a supplemental financial incentive, if a supplemental financial incentive is awarded by the board.

314.5(3) *Repayment penalty for nonexclusive renewable fuel use.* In the absence of a waiver from the board, the department may impose a ~~civil~~ 25 percent penalty due to a ~~grantee's grant recipient's~~ use of infrastructure equipment for which a grant was awarded, for the storage or dispensing, within the time frame stated in the agreement, of motor fuel other than the type of renewable fuel for which the grant was awarded.

314.5(4) ~~*Duration of grant agreement; repayment*~~ *Repayment or board waiver.*

a. ~~The duration of a cost share grant agreement shall be five years from the date of submission of verified documentation of project completion.~~

b. ~~Grantees shall~~ A grant recipient may not use the infrastructure to store and dispense motor fuel other than the type approved by the board, unless one of the following applies: (1) the grantee is granted a waiver by the board, or (2) the grantee pays back the moneys awarded ~~with an additional~~ including a 25 percent penalty.

314.5(5) *Waiver criteria.* The board may waive repayment of grant funds plus the 25 percent penalty. A grant recipient seeking a waiver during the time period in which a cost-share agreement is in effect shall submit a written waiver request to the board. The board will consider waiver requests under the following circumstances:

a. ~~Transition provision for awards made prior to December 21, 2006. A grant recipient that received an award prior to December 21, 2006, and signed a cost share agreement contract that included the five year exclusive use of renewable fuel requirement has up to 60 days after July 25, 2007, to request that the board rescind the contract and grant a permanent waiver of the 25 percent penalty. Any grant funds disbursed shall be paid back, the 25 percent penalty will be waived, and the contract will be terminated.~~

b. a. Permanent waiver.

~~(1) Waiver due to completion of contract obligations (no repayment and no 25 percent penalty). The board hereby grants a waiver of the obligation to repay grant funds plus any penalty to all grant recipients that satisfy the terms and conditions of their cost share grant agreements including, but not limited to, the five year exclusive use of renewable fuel requirement.~~

~~(2)~~ (1) Waiver due to demonstration of good cause (no repayment and no 25 percent penalty). A grant recipient may request a permanent waiver during the time period in which a cost-share grant agreement is in effect if the grant recipient can demonstrate good cause for failure to continue using the approved renewable fuel. "Good cause" includes, but is not limited to, events such as the following:

1. Permanent business closure due to bankruptcy.
2. Permanent closure of underground or aboveground storage tanks.

~~(3)~~ (2) Waiver due to demonstration of financial hardship (repayment on a sliding scale and no 25 percent penalty). A grant recipient may seek a permanent waiver of exclusive use of the approved renewable fuel during the time period in which a cost-share agreement is in effect due to financial hardship. The grant recipient must demonstrate that continuing to dispense the renewable fuel at a project site will cause a financial hardship. A request for waiver due to financial hardship shall include documentation to show a "good faith" effort to market the fuel, specifically the most recent six-month history of gallons of approved renewable fuel sold by month, marketing/advertising efforts, retail price comparison of E-85 to E-10 (or regular gasoline) or of biodiesel to regular diesel. If a waiver is granted, the 25 percent penalty will not be assessed, but the grant funds will be repaid as follows:

1. ~~Months 1 through 10 of contract, 100 percent of grant amount~~ Three-year cost-share agreement: Months 1 through 11 of the cost-share agreement, 100 percent of grant amount. Months 12 through 36 of cost-share agreement, 4 percent of grant amount for each month remaining on the cost-share agreement.

2. ~~Months 11 through 60 of contract, 2 percent of grant amount for each month remaining on contract~~ Five-year cost-share agreement: Months 1 through 10 of the cost-share agreement, 100 percent of grant amount. Months 11 through 60 of the cost-share agreement, 2 percent of grant amount for each month remaining on the cost-share agreement.

e. b. Temporary waiver (temporary suspension of repayment and 25 percent penalty). A grant recipient may request a temporary suspension of the obligation to use only the approved renewable fuel and a temporary waiver of the repayment plus penalty requirement. A request for a temporary waiver, or an extension of a temporary waiver, will only be considered by the board if the recipient can document to the board's satisfaction that market forces are not allowing for advantageous sales of the approved renewable fuel. A grant recipient shall submit documentation of the previous six-month sales history and marketing attempts to substantiate the grant recipient's request for a temporary waiver. The following conditions apply to requests for a temporary waiver:

(1) A temporary waiver will not be granted during the first six months of a cost-share agreement.

(2) A temporary waiver will not shorten the grant recipient's obligation to use the infrastructure to store and dispense the approved renewable fuel for a minimum of three years or five years. If the board approves a temporary waiver, the ~~contract~~ duration of the cost-share agreement will be extended by the length of the approved waiver period.

(3) A grant recipient may request a temporary waiver of up to six months. The board may approve ~~a request to extend a temporary waiver for an additional six months~~ one or more six-month waivers, provided the total cumulative time period allowed for temporary waivers shall not exceed two years.

(4) If a state executive order suspending the Iowa Renewable Fuel Standard (RFS) schedule is issued, the board may decide to grant a temporary waiver to all grant recipients. The board will establish the duration of the waiver and provide written notice to all grant recipients of the board's action. When the board determines that a temporary waiver is necessary due to suspension of the Iowa RFS schedule, the ~~three-year or five-year contract period~~ duration of the cost-share agreement will not be extended by the length of the temporary waiver.

These rules are intended to implement ~~2006 Iowa Acts, chapter 1142, sections 28 to 34. Iowa Code sections 15G.201, 15G.202 and 15G.205, Iowa Code Supplement sections 15G.203 and 15G.204, and 2008 Iowa Acts, House File 2689, and House File 2450, section 6(9)“f.”~~